Supreme Court, U.S.
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No. 94-1656

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

FARMERS INSURANCE COMPANY, INC.,
Petitioner,
v.
JOSEPH JABBOUR,
Respondent.

On Petition For Writ of Certiorari
To the Supreme Court of the State of Oklahoma

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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LIST OF PARTIES

All parties in the underlying state court action appear in the caption of this case. Farmers Insurance Company, Inc. has no no subsidiaries. Farmers Insurance Company, Inc. is owned by Farmers Insurance Exchange.

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Pursuant to Sup. Ct. R. 15.6, petitioner, Farmers Insurance Company, Inc., ("Farmers") submits this Reply To Respondent's Brief in Opposition.

I. Brief Statement Of Case

Respondent Joseph Jabbour ("Jabbour") asserts that this Court lacks jurisdiction. Jabbour contends that the Oklahoma Supreme Court never decided a federal claim. Jabbour also

concludes that the Oklahoma Supreme Court order of January 10, 1995, is not a "final judgment or decree" within the meaning of 28 U.S.C. § 1257(a)(1993).

However, and as more fully discussed below, the Oklahoma Supreme Court in fact determined a federal question. Indeed, the Oklahoma Supreme Court expressly required Farmers to file a brief addressing whether the Federal Arbitration Act ("FAA") provides a basis for appeal. (Pet. For Cert., Appendix, pg. 10).

As to finality, Jabbour confuses the precise order that Farmers asks this Court to review. Farmers is not asking for review of the trial court's order refusing to confirm the arbitration award. (Pet. For Cert., Appendix, pg. 6-9). Rather, Farmers is seeking review of the Oklahoma Supreme Court's order dismissing Farmers' appeal and refusing to accept the matter within its original jurisdiction. (Pet For Cert., Appendix, pg. 11-12). The Oklahoma Supreme Court's order is "final" even though further state court proceedings are anticipated.

II. Argument And Authority

A. THE OKLAHOMA SUPREME COURT DETERMINED THAT THE FAA APPEAL RULES ARE INAPPLICABLE IN STATE COURTS

The Oklahoma Supreme Court in fact determined a federal claim or issue. The federal issue presented to the Court was whether 9 U.S.C. § 16 (West Supp. 1995) requires state courts to review various anti-arbitration orders.

Farmers specifically raised this federal issue in its Petition In Error filed with the Oklahoma Supreme Court. (Pet. For Cert, appendix, pg. 30). The Oklahoma Supreme Court subsequently ordered Farmers to show cause why the appeal should not be dismissed. (Pet. For Cert., appendix, pg. 10). The Court specifically asked Farmers to brief the following issues: "1) why the Federal Arbitration Act should apply when the Oklahoma Arbitration Act expressly exempts insurance contracts from its provisions...2) whether the Federal Arbitration Act applies in this case...and 3) if the Oklahoma and Federal Arbitration Acts don't apply, any other reason why the trial court's order would be appealable." (Pet. For Cert., appendix, pg. 10).

Farmers filed a brief expressly addressing the federal issue of whether 9 U.S.C. § 16 is applicable in state court. In its brief, Farmers cited 9 U.S.C. § 16 as the sole basis for the appeal and request to assume original jurisdiction. On January 10, 1995, the Oklahoma Supreme Court dismissed the appeal and refused to assume original jurisdiction. (Pet. For Cert., appendix, pg. 11-12).

The Oklahoma Supreme Court simply could not have entered the above order without deciding whether the FAA appeal rules are applicable in state court. See, Powell v. Supervisors Of Brunswick Co., 150 U.S. 433, 440 (1893)("If it appear from the record by clear and necessary intendment that the Federal question must have been directly involved so that the state court could not have given judgment without deciding it, that will be sufficient...")

The record in the present case clearly shows the Oklahoma Supreme Court determined a federal issue.

B. THE OKLAHOMA SUPREME COURT'S ORDER IS "FINAL" SINCE LATER REVIEW OF THE ORDER CANNOT BE HAD, REGARDLESS OF THE OUTCOME OF THE CASE

The Oklahoma Supreme Court's order denying review of the trial court's refusal to confirm the arbitration award is "final." The order clearly falls within the one of the categories of cases in which U.S. Supreme Court jurisdiction is proper although further state proceedings are anticipated. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 481 (1975). The applicable category is as follows:

> In the third category of cases are those situations where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case. Thus, in these cases, if the party seeking interim review ultimately prevails on the merits, the federal issue will be mooted; if he were to lose on the merits, however, the governing state law would not permit him to again present his federal claims for review.

Id.

Here, Farmers' federal claim is that 9 U.S.C. § 16, which provides for immediate appeal of various interlocutory orders, is

applicable in state courts. The Oklahoma Supreme Court rejected Farmers' federal claim. If this case goes to trial, Farmers' federal claim will be moot. Farmers will never again be able to raise its federal claim, regardless of the ultimate outcome of the case. This Court has jurisdiction to review the Oklahoma Supreme Court's order. See, National Socialist Party Of America v. Village of Skokie, 432 U.S. 43 (1977)(Illinois Supreme Court's order refusing to stay trial court's injunction pending appellate review was a final judgment for purposes of jurisdiction).

III. Conclusion

The highest court of Oklahoma, the Oklahoma Supreme Court, decided a federal claim. Further review of the federal claim cannot be had, regardless of the outcome of the case. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a)(1993).

Respectfully submitted,

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